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**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** McShade Enterprises

**File:** B-278851

**Date:** March 23, 1998

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William McAndrew for the protester.

Kacie A. Haberly, Esq., General Services Administration, for the agency.

Robert Arsenoff, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Protest alleging that agency misevaluated protester's proposal is denied where it is based solely on protester's disagreement with the evaluators' conclusions.

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## DECISION

McShade Enterprises protests the rejection of its offer under request for proposals (RFP) No. FCXA-SG-970005-N, issued by the General Services Administration (GSA) as a multiple-award Federal Supply Schedule (FSS) contract solicitation to obtain various designated temporary professional support services to be ordered by government agencies. McShade principally alleges that its proposal was misevaluated and that the agency should have conducted discussions with, or sought clarification from, the protester with regard to shortcomings in its proposal.<sup>1</sup>

We deny the protest.

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<sup>1</sup>McShade also questions the adequacy of the debriefing conducted by GSA. Such challenges are procedural matters which do not affect the validity of an award decision and we generally will not review them. Thermolten Tech., Inc., B-278408, B-278408.2, Jan. 26, 1998, 98-1 CPD ¶ 35 at 5. Likewise, we will not review McShade's complaints about the manner in which GSA handled its agency-level protest since it did not affect the validity of the procurement. In addition, we dismiss as untimely McShade's allegations that the solicitation's description of work required was so broad that offerors could not reasonably provide a detailed description of their capabilities to perform and the manner in which they planned to perform. Protests based on alleged improprieties in a solicitation which are apparent prior to the time set for receipt of initial proposals must be filed prior to that time. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1997). McShade's initial agency-level protest was not filed until after its proposal had been eliminated from consideration.

The RFP, issued on August 11, 1997, with a September 26 closing date, contemplated the award of multiple-award FSS contracts for 18 different support services to be ordered by individual agencies. (McShade offered contract specialist services.) Section E.3 of the RFP provided that proposals were to be evaluated on technical merit and price with technical quality being more important than price. That section cautioned offerors that proposals would be rejected if they were determined to be unrealistic in terms of technical commitment, if they exhibited a lack of technical competence, or if they indicated a failure to comprehend the complexities and risks of the solicitation requirements. The section also indicated that all technical factors were of equal importance.

Section E.2.5 of the RFP listed five technical factors: (1) Executive Summary; (2) Program Management; (3) Training; (4) Quality; and (5) Past Performance. That section required offerors to submit a brief but detailed response to topics listed under each factor and stated that "[p]roposals which merely offer to perform the work in accordance with the Statement of Work [SOW] will be rejected."

Finally, section E.1(g) of the RFP provided:

The Government intends to evaluate offers and award a contract without discussions with offerors. Therefore, the offeror's initial offer should contain the offeror's best terms from a price and technical standpoint. However, the Government reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary.

By letter dated October 23, the protester was notified that its proposal had been rejected because of technical deficiencies identified under two factors, Program Management and Quality. Following a debriefing and an unsuccessful agency-level protest, McShade filed this protest challenging GSA's determinations.

It is not the function of this Office to evaluate technical proposals de novo; rather, in reviewing a protest against an allegedly improper evaluation, we will examine the record only to determine whether the agency's judgment was reasonable and consistent with the stated evaluation factors. J&E Assocs., Inc., B-278187, Jan. 5, 1998, 98-1 CPD ¶ 42 at 2-3. The protester's disagreement with the agency does not render the evaluation unreasonable. Id. at 3. Here, the agency report establishes that the evaluation of McShade's proposal was reasonable and consistent with the RFP's evaluation scheme.

The Program Management factor required a detailed response to the following: "Describe your process for performing the work required in the Statement of Work. This should include the time from receipt of a quote through the completion of a work order." RFP § E.2.5.2. Initially noting that the nature of the services to be

provided will vary and be dependent on the particular needs of an ordering agency, the substance of McShade's response to the factor was as follows:

At the time of receipt of any contractual authorization, a program plan will be accomplished. This program plan will define the major milestones of the project and the scheduled dates for their completion. Manpower allocations will be based upon this program plan. This plan will be constantly monitored to insure successful accomplishment of the assigned tasks within the schedules required.

McShade Enters. Proposal § 2.0.

The agency points out that the SOW requires the contractor to be able to receive quotes between specific hours and be capable of responding "within 2 hours of receipt, and fill orders by the following business day." RFP § C.2.1.5.2. The evaluators determined that McShade's response does not show that the protester can receive quotes within the stated time frames and fill an order on the next business day. McShade contends that the numerous possible contract specialist services that could be ordered preclude any contractor from performing within 1 day and submits that, given the variety of tasks possible, its generic description of a program plan approach was "more than responsive to the stated Program Management requirement." McShade Enters. Agency Protest at 10.

The factor required a demonstration of how an offeror could meet the SOW requirements including specified time frames. The agency reasonably expected an offeror to address those time frames and, since McShade did not, GSA reasonably found the firm's proposal to be technically unacceptable in this regard. McShade's mere disagreement with the agency's judgment does not render that judgment unreasonable. As noted above, to the extent that McShade is objecting to the RFP requirements, its protest is untimely and not for consideration on the merits.

The Quality factor required, inter alia, a detailed response to the following: "Describe how you will handle a high number of orders and still ensure prompt service, and the quality of temporary employees provided [and] [d]escribe your procedures to ensure customer satisfaction when a temporary employee is rejected by the ordering office." McShade's response was as follows:

4.1. General: Mr. McAndrew's [a McShade principal] successful 30 year career in the U.S. Government contracting environment could only have been achieved by his highest commitment to the quality of the services performed and the documents published. By the careful recruitment and selection of highly qualified and motivated contracting professionals, the high level of quality will be retained.

4.2 Customer Satisfaction: If the customer is dissatisfied with the performance accomplished, acceptable personnel changes will be made and the customer will not have to pay for those contracting services that were provided.

McShade Enters. Proposal § 4.0.

The agency found that the generalized statement regarding recruitment did not address the issue of how a large volume of orders would be handled while still ensuring prompt service and quality. In addition, the agency noted that the lack of any definition of the term "acceptable personnel changes" rendered the response to the issue of customer satisfaction insufficient.

McShade disagrees with the evaluators' concerns alleging that staffing is of preeminent importance in a service contract and that the "handling of orders" relates to simple administrative action." McShade Enters. Agency Protest at 11. In addition, while not directly addressing the issue of defining "acceptable personnel changes," McShade asserts that its "no fault" billing policy is unique in the industry. Id.

Again, the agency's concerns are reasonable and reflect the stated evaluation criteria. At best, McShade has expressed disagreement with these conclusions offering only what it considers to be preferable quality approaches. This disagreement does not render the agency's judgment unreasonable.

Finally, McShade asserts that discussions should have been held to correct any deficiencies in its proposal and suggests that only mere "clarifications" were necessary to ensure the acceptability of its proposal. The agency maintains that the RFP placed McShade on notice of the likelihood of an award without discussions, and that McShade's unacceptable technical proposal was properly eliminated from consideration for an award.

There is generally no obligation that a contracting agency conduct discussions where, as here, the RFP specifically instructs offerors of the agency's intent to award a contract on the basis of initial proposals. Robotic Sys. Tech., B-278195.2, Jan. 7, 1998, 98-1 CPD ¶ 20 at 11. While the contracting officer's discretion in deciding not to hold discussions is not unfettered, it is quite broad and has been expanded in recent years. Id. Our Office will review the exercise of such discretion to ensure that it was reasonably based on the particular circumstances of the procurement. Id.

Here, the record provides no indication that the contracting officer abused his discretion in deciding not to conduct discussions with McShade. While McShade contends otherwise, as discussed above, there is ample evidence that the agency reasonably evaluated McShade's proposal as unacceptable. The protester

apparently prepared its proposal under the (mistaken) belief that the agency would necessarily conduct discussions despite the RFP's advice to the contrary. However, since the RFP advised that the agency intended to make awards without discussions, McShade could not reasonably presume that it would have a later opportunity to improve its proposal. On this record, there is no basis to object to the agency's determination not to conduct discussions. Id.<sup>2</sup>

The protest is denied.

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<sup>2</sup>As to McShade's argument that GSA could have communicated with the firm without conducting discussions since such communications would have simply been clarifications, we find no merit in this position. McShade's proposal was unacceptable. Since discussions occur when information provided by an offeror is essential for determining the acceptability of a proposal, any communications with McShade in order to give the firm an opportunity to make its proposal acceptable would have constituted discussions. Id. at 5.